

MCC:JJT:mel:2001V00126

115
99
FILED
WILLIAMSPORT, PA
JUN 6 3 2002

MARY E. D'ANDREA, CLERK
Per AK
DEPUTY CLERK

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

JOHN CHARLES KENNEY,	:	
Plaintiff	:	
	:	
v.	:	Civil No. 1:CV-00-2143
	:	(McClure, J.)
JAKE MENDEZ;	:	(Blewitt, M.J.)
JESUS "JESSE" GONZALEZ;	:	
JAMES "JIMMY" SCARBOROUGH; and	:	
KELLY M. KEISER,	:	
Defendants	:	

BRIEF IN OPPOSITION TO PLAINTIFF'S
MOTION FOR STAY

Kenney initiated this Bivens action for monetary damages on December 12, 2000, for injuries he incurred while allegedly being assaulted by staff at USP Allenwood on September 29, 1999. An answer to the complaint was filed on September 7, 2001. On February 15, 2002, a motion for judgment on the pleadings was filed on behalf of defendants based on Kenney's failure to exhaust his administrative remedies and the fact that respondeat superior cannot form the basis of liability in a Bivens action. The motion has been briefed by the parties and is ripe for consideration by the Court.

Presently pending before the Court is "Pro se Plaintiff's Change of Address and Notice" in which Kenney informs the Court that he has been transferred to USP Pollock, Louisiana. He also "advises" the Court that he has not yet obtained his personal property and therefore requires a sixty-day "temporary stay in

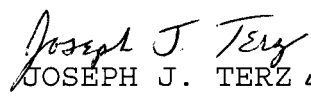
the proceedings" so he can "get situated at his current place of confinement." (Notice, p. 1.) To the extent Kenney's pleading is construed as a motion for a stay, defendants oppose the motion.

First, Kenney has failed to support his "motion" with a supporting brief. Therefore, in accordance with Local Rule 7.5, the motion should be deemed withdrawn.

Second, there is no reason for the case to be stayed at this juncture as briefing on the motion for judgment on the pleadings has closed and there are no other motions pending. Should the Court render a decision on the motion which requires or compels the parties to respond, defendants would not oppose a reasonable enlargement of time if, at that time, Kenney is "still experiencing adjustments to his "NEW" place of confinement." For these reasons, the motion for a stay should be denied.

Respectfully submitted,

THOMAS A. MARINO
United States Attorney


JOSEPH J. TERZ *JS*
Assistant U.S. Attorney
MICHELE E. LINCALIS
Paralegal Specialist
316 Federal Building
240 West Third Street
Williamsport, PA 17703

Date: June 3, 2002

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

JOHN CHARLES KENNEY,	:	
Plaintiff	:	
	:	
v.	:	Civil No. 1:CV-00-2143
	:	(McClure, J.)
JAKE MENDEZ;	:	(Blewitt, M.J.)
JESUS "JESSE" GONZALEZ;	:	
JAMES "JIMMY" SCARBOROUGH; and	:	
KELLY M. KEISER,	:	
Defendants	:	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Middle District of Pennsylvania and is a person of such age and discretion to be competent to serve papers.

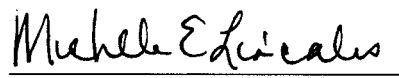
That this 3rd day of June 2002, she served a copy of the attached

BRIEF IN OPPOSITION TO PLAINTIFF'S
MOTION FOR STAY

by placing said copy in a postpaid envelope addressed to the person hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and contents in the United States Mail at Williamsport, Pennsylvania.

ADDRESSEE:

John Charles Kenney
Reg. No. 05238-041
U.S. Penitentiary
P.O. Box 2099
Pollock, LA 71467



MICHELE E. LINCALIS
Paralegal Specialist